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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1985

JAMES R. DAVIS, Petitioner

v.

CITY OF ROSWELL, GEORGIA and
T.L. JOYNER, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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February, 1986

QUESTIONS PRESENTED

I. WHETHER THE RESPONDENTS' INTERFERENCE WITH PETITIONER'S ATTEMPT TO SECURE EMERGENCY MEDICAL CARE FOR HIS TERMINALLY ILL WIFE VIOLATED A DUE PROCESS LIBERTY INTEREST OF PETITIONER'S ARISING FROM THE MARITAL RELATIONSHIP?

II. WHETHER PETITIONER COULD SUE INDIVIDUALLY, RATHER THAN IN A REPRESENTATIVE FOR CAPACITY, TO RECOVER DAMAGES FOR RESPONDENTS' INVASION OF HIS RIGHT TO SECURE EMERGENCY MEDICAL CARE FOR HIS TERMINALLY ILL WIFE?

III. WHETHER THE GEORGIA STANDARD FOR GRANTING JUDGMENT N.O.V. AND NEW TRIAL, AS APPLIED IN THIS CASE, RESULTED IN A DENIAL OF PETITIONER'S FEDERALLY PROTECTED RIGHTS UNDER SECTION 1983?

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CITY OF ROSWELL and T.L. JOYNER, Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

James R. Davis respectfully petitions this Court to issue a writ of certiorari to review the judgment of the Supreme Court of Georgia entered October 30, 1985. (A-2) This petition comes after the Supreme Court of Georgia denied Davis' petition for reconsideration on November 19, 1985. (A-1) Coming within the 90 days allowed for the filing of petitions for certiorari

under 28 U.S.C. §2101(c), this petition is timely filed.

OPINION BELOW

The opinion of the Supreme Court of Georgia in this case is reported at 255 Ga. 158, 335 S.E.2d 582.

JURISDICTION

Jurisdiction is conferred upon this Court to review the judgment of the Supreme Court of Georgia by 28 U.S.C. §1257(3).

STATUTES

42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured

by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

O.C.G.A. §5-5-50:

The first grant of a new trial shall not be disturbed by an appellate court unless the appellant shows that the judge abused his discretion in granting it and that the law and facts require the verdict notwithstanding the judgment of the presiding judge.

O.C.G.A. §9-11-50(b):

Motion for judgment notwithstanding the verdict -- When made; new trial motion. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted,

the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 30 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or, if a verdict was not returned, such party, within 30 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment

as if the requested verdict had been directed or may order a new trial.

O.C.G.A. §1-11-50(c):

Motion for judgment notwithstanding the verdict -- Conditional rulings on grant of motion; motion for new trial by losing party.

(1) If the motion for judgment notwithstanding the verdict provided for in subsection (b) of this Code section is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall

proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and, if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial not later than 30 days after entry of the judgment notwithstanding the verdict.

O.C.G.A. §9-11-50(d):

Motion for judgment notwithstanding the verdict -- Denial of motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to a new trial in the event the appellate court concludes

that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this Code section precludes it from determining that the appellee is entitled to a new trial or from directing the trial court to determine whether a new trial shall be granted.

STATEMENT OF CASE

A. Introduction

This case is an action under 42 U.S.C. §1983. Unlike the vast majority of such cases, it was initiated in state rather than federal court. Unfortunately for the petitioner, James R. Davis, the state judiciarry in Georgia has seriously misconceived the nature of the law applicable to this case and it has enforced its procedural rules in a manner that would undermine the ability of litigants in Georgia courts to assert rights under section 1983. Moreover, there is even some evidence of animosity on the part of the trial judge toward section 1983 actions, notably those aimed at establishing municipal liability under Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978). After the petitioner had to undertake one appeal to overcome summary judgment dismissing his case, Davis v. City of Roswell, 250 Ga. 8,

295 S.E.2d 317 (1982), he eventually won a jury verdict. Thereupon, the trial judge granted the respondents' motion for judgment n.o.v. and conditional order for a new trial. A second round of appeals followed in which the Georgia Supreme Court ruled that the evidence adduced by the petitioner was insufficient as a matter of law to support the verdict. City of Roswell v. Davis, 255 Ga. 158, 335 S.E.2d 582 (1985). That court considered the case only on the theory of the inadequate training and supervision of a police officer.

As will be shown in greater detail, the decision of the Georgia Supreme Court below did not discuss or apparently consider either of the primary theories of recovery advanced by the petitioner at trial and incorporated into the trial court's instructions to the jury: (1) the stop and detention of petitioner without probable cause to believe that he had violated any traffic law of the State of

Georgia; and (2) the interference with petitioner's efforts to secure immediate medical treatment at a nearby hospital for his elderly wife who lay dying of cancer in the backseat of his car and had lapsed into cardiogenic shock.

B. Facts

1. Medical Emergency of Petitioner's Wife

In the spring of 1980, petitioner's elderly wife (age 66) was terminally ill with cancer in the pericardium region of her body. Despite her condition, she continued living at home with her husband, who though 69 himself, was alert and fit enough to care for her. Early on the morning of May 24, 1980, petitioner was awakened by his wife. Her condition had apparently taken a significant turn for the worse. (A-28) Petitioner reached Dr. Eyzaguirre, his wife's physician, by telephone and described her "gasping" and the "bluish" color of her nails and lips.

(A-36) Dr. Eyzaguirre instructed petitioner to "rush" Mrs. Davis to St. Joseph's Hospital. (A-36) Because petitioner lived in a rural area which would make it difficult for an ambulance to find his house, he decided to drive his wife to the hospital in the family station wagon. (A-29) With the help of a neighbor, petitioner got his wife into the back seat. At that point, she had apparently lapsed into unconsciousness. (A-30)

2. Stop of Petitioner's Car En Route to Hospital

Petitioner left his house for St. Joseph's Hospital at approximately 6:15 a.m. on May 24. He drove with his emergency lights blinking. En route, petitioner passed a car, going in the opposite direction, driven by Officer Ramey of the City of Roswell Police Department. Officer Ramey turned his car around, followed petitioner's car for about 1.5 miles,

and then stopped it as it was about to enter a divided, limited access highway. The time was 6:25 a.m. The distance to the hospital from the point of the stop was between 8.2 and 8.5 miles.

The testimony about justification for the stop was in direct conflict. Officer Ramey said that petitioner was driving "erratically" (A-41); that petitioner crossed the centerline of the road illegally (A-22); and that when petitioner did so, he drove or almost drove his (Ramey's) oncoming car off the road. (A-22; A-23) Petitioner in contrast stated that he was not driving erratically; that he did not violate any traffic laws; and that he did not cause Ramey's car to go off the road or to swerve to avoid a collision. (A-22 to A-24) Petitioner was not charged with or convicted of any traffic violation arising from this episode. (A-21; A-25) Nevertheless, according to petitioner, Ramey stated flatly

that he could not leave the scene. (A-25) Ramey's version was that petitioner was not restricted in any way. (A-45 to A-48)[1] It is significant that Ramey's action in this regard was ratified when Ramey's shift supervisor, Officer J.B. Watson, came on the scene and assumed control of the situation. Watson testified that he would not have allowed Davis to leave. (A-49; A-50)

The jury was instructed on the constitutional standard under the Fourth Amendment for a valid arrest. (A-73 to A-76) It was also instructed to consider this standard in light of certain applicable traffic laws of the State of Georgia. (A-76) Insofar as

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[1] Ramey's testimony on this point is inconsistent. At one point, he said that petitioner was so upset, he was incapable of driving to the hospital safely. (A-47) Yet, moments later, he denied telling petitioner that he couldn't go. (A-47) Then Ramey testified that if petitioner had gotten back in his car and left, he "would have stood there." (A-48)

Ramey's liability for damages is concerned, Ramey received the benefit of a qualified immunity instruction (A-78) despite the fact that he did not plead immunity as an affirmative defense as required by Gomez v. Toledo, 446 U.S. 635 (1980). Petitioner argued to the jury that the stop of his car was illegal because Officer Ramey lacked probable cause to believe that a traffic violation had occurred.[2]

3. Interference With Petitioner's Right to Secure Medical Care for His Wife

According to petitioner, he explained to Ramey that he was taking his wife to the hospital and that it was a medical emergency. (A-25) Ramey testified that his immediate reaction was doubt (A-40), but he changed his mind after observing Mrs. Davis' condition as she law in the backseat of petitioner's car. (A-39) At

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[2]This segment of closing argument for the petitioner is not in the Appendix. This theory, of course, was pleaded in petitioner's complaint. (A-97)

that point, Ramey took over complete control of the situation. He called for assistance within three minutes of the stop and he received the following response: (1) his immediate supervisor, Officer J.B. Watson, arrived at around 6:30 a.m.; (2) the Roswell Volunteer Fire Department Rescue Squad arrived at 6:33 a.m.; and finally (3) an ambulance arrived at 6:38 a.m.[3]

According to petitioner's testimony, he asked Officer Ramey to provide an escort so that he could take his wife on to the hospital. (A-25) He was refused inasmuch as providing such an escort was against the policy (oral) of the Police Department of the City of Roswell. (A-60) Petitioner was also refused when he asked Ramey to take Mrs. Davis to the hospital in his patrol car. (A-25) This again was in keeping with departmental policy. Finally,

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[3]Apparently, a member of the rescue squad called the ambulance.

Officer Ramey made the judgment -- opposed vigorously by petitioner before the jury -- that the petitioner was unfit to drive his wife on to the hospital himself. (A-41; A-44 to A-46)

Apart from Officer Ramey's actions which were supported by his supervisor, Officer Watson, who was on the scene for most of this incident, there was evidence that the length of delay in getting Mrs. Davis to the hospital was due to policies of the Police Department. First, when, in the judgment of a City of Roswell officer a medical emergency existed, the first step was to call the rescue squad of the Volunteer Fire Department. (A-54; A-61) While the rescue squad was trained to administer emergency medical care to Mrs. Davis and did so, the squad was not licensed to transport anyone. (A-34; A-35) Consequently, Mrs. Davis had to be taken out of the rescue squad vehicle to which she had been moved initially

(A-31) and placed in the ambulance when it arrived minutes later -- 6:38 a.m. The ambulance records indicate that the ambulance was en route to the hospital by 6:47 a.m. and arrived there by 6:54 a.m. Thus, the jury could have found that the delay of 22 minutes -- between the time of the stop at 6:25 a.m. and the resumption of the trip to the hospital -- was entirely attributable to the intervention of Officers Ramey and Watson acting in furtherance of Police Department policy or practice.

Petitioner's primary argument to the jury was that this unwanted, unnecessary and unjustified intervention denied his personal right[4] to secure medical care for his wife. (A-65; A-68 to A-70) Moreover,

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[4]Petitioner was not seeking to recover for incompetent medical care which might have been given to his wife while she was stopped on the roadside. The theory was deprivation of petitioner's right to secure medical assistance for his wife.

the trial judge incorporated that theory into his instructions to the jury. (A-74) It is crucially important to keep the interference theory separate from the inadequate training issue.[5] Under that theory, petitioner claimed Mrs. Davis received incompetent and improper care during the stop and that the shortcomings were due to the City of Roswell's inadequate training of Officer Ramey.

Mrs. Davis' physician testified that she was in cardiogenic shock upon arrival at the hospital. He said that this condition was a factor in causing her death the next day at 12:45 p.m. In his view, time was of the essence in treating cardiogenic shock and a delay of 15 minutes to an hour in getting Mrs. Davis to the hospital could have been harmful.

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[5]It is noteworthy that the Georgia Supreme Court treated inadequate training as the sole issue in the case. (A-2)

4. Jury Verdict for Petitioner Taken Away

The jury verdict found that respondents Joyner and the City of Roswell had violated the civil rights of petitioner. (A-79; A-80) Officer Ramey was not held liable.[6] Compensatory damages were awarded to petitioner in the amount of $5,000 from Joyner and $250,000 from the City of Roswell. The trial judge, who during discussion outside the presence of the jury had expressed strong disagreement with section 1983 municipal liability under Monell (A-16; A-19), granted the respondents' motions for judgment n.o.v. and conditional order for a new trial in the event the judgment n.o.v. did not withstand appellate review.

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[6]Ramey also escaped liability for wrongful death as well.

C. Appeals Below

1. Court of Appeals of Georgia

After the trial judge granted respondents' motion for judgment n.o.v. and conditional order for new trial, petitioner appealed to the Court of Appeals of Georgia. Although that court reversed the judgment n.o.v., it left the trial judge's order for new trial intact. Davis v. Ramey, 174 Ga. App. 417, 330 S.E.2d 130 (1985). Although petitioner was grateful for another turn at the plate, the Court of Appeals took an unduly narrow view of the theories on which the case was tried.

To the Court of Appeals, the case involved a question of the deprivation of the wife's right to competent medical care. 330 S.E.2d at 132. While the case could have been litigated under section 1983 on that theory, it was not and for good reason. The inadequate medical treatment theory was encompassed within the state

wrongful death action which was a representative suit! (A-93 to A-107; A-71)[7] It sought recovery for the value of Mrs. Davis' life. The inadequate medical treatment theory was not replicated under section 1983 because Mrs. Davis was unconscious during the relevant events and therefore had little basis for anything but nominal damages. Petitioner, however, was acutely aware of what was happening to his wife during that short but agonizing period of delay on the side of the road. The issue was posed to the jury as the enfringement of petitioner's constitutionally protected right to give aid and comfort to his wife and to seek medical assistance for her during what he feared were the last hours of her life. (A-74) It was petitioner's grief and mental suffering for which the jury was asked to

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[7]The trial judge's wrongful death charge is not set out in the Appendix to this petition for certiorari.

give compensation. This point apparently was not understood by the Court of Appeals. Finally, the Court of Appeals did not mention the other key theory of recovery argued by petitioner to the jury: the stop and detention by Officer Ramey and shift supervisor, Officer J.B. Watson, were in violation of his Fourth Amendment rights.

This overly narrow conception of the issues did not prevent the Court of Appeals from overturning the trial court's grant of respondents' motion for judgment n.o.v. The harm, however, came in its consideration of petitioner's attack on the conditional order for new trial. The Court of Appeals summarily upheld that order relying on OCGA §5-5-50 which, in practice though not in theory, makes a trial judge's first grant of a new trial motion virtually unchallengeable on appeal. 330 S.E.2d at 132. Given the conclusory nature of the trial judge's order (A-12), it is impossible to tell what considerations

of justice demanded a new trial. Two notable errors in the jury instructions were to the detriment of petitioner not the respondents.[8] the evidence on the relevant legal issues -- properly viewed -- conflicted in some areas, but in others it heavily favored the petitioner.[9] Thus,

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[8]For example, in the qualified immunity instruction, the trial judge permitted the jury to find for Officer Ramey if he acted in subjective good faith even though a reasonable person would have concluded that Officer Ramey lacked probable cause to stop or detain petitioner. (A-78) In the instruction on interference with petitioner's right to secure medical care for his wife, the trial judge quoted the "deliberate indifference" standard initially and then said that petitioner could recover only if the respondents intentionally prevented him from getting medical care. (A-74)

[9]The major example would be evidence of the policies of the City of Roswell: (1) "officer discretion" to make the judgment whether a situation is a medical emergency (A-62); (2) no police escorts for persons in medical emergency situation to get them to hospital more rapidly (A-60); (3) no use of police cruisers to transport persons in medical emergency situation to hospital (A-25, A-60); and (4) practice of calling Rescue Squad to medical emergency situations even though it is not licensed to transport injured or seriously ill persons to hospitals (A-34, A-35, A-54, A-61). All of this evidence came from witness' aligned with respondents.

the jury's role was largely to make the necessary credibility determinations. One might expect that to be among the last functions where judges would be involved in second-guessing juries. But it was apparently done in this case and, under OCGA §5-5-50, it is proper as a matter of state law.

2. Supreme Court of Georgia

Petitioner filed a writ of certiorari to the Supreme Court of Georgia attempting to get review of the Court of Appeals' ruling permitting the order for new trial to stand. His certiorari petition was dismissed on May 1, 1985. (A-7) In the meantime, respondents asked the Supreme Court of Georgia to review the Court of Appeals' ruling taking away their judgment n.o.v. Their petition for certiorari was granted April 25, 1985.

The Supreme Court of Georgia held that the Court of Appeals erred in taking

away the respondents' judgment n.o.v. City of Roswell v. Davis, 255 Ga. 158, 335 S.E.2d 582 (1985). It perpetuated the mistake made by the Court of Appeals. In the very first sentence of the opinion, the Court defined the issue on review as involving "the alleged inadequate training of a police officer." 335 S.E.2d 582. That demonstrably was not the case. The inadequate medical treatment evidence was offered mainly on the state wrongful death claim to show that Officer Ramey's negligence caused the death of Mrs. Davis. The jury, however, found against petitioner on the death claim which was a representative action. Conceding that the jury was right on that question, petitioner argued with no evident effect that the jury was correct in its assessment of liability on the other issues: (1) his Fourth Amendment rights and (2) state interference with his right to secure medical care for his wife.

The Supreme Court of Georgia professed to have construed the evidence in a light most favorable to the petitioner. But, in fact, it reweighed the evidence on the Fourth Amendment issue. For example, Officer Ramey and the petitioner were in direct conflict on whether petitioner had violated any traffic laws. The jury apparently believed petitioner, not Officer Ramey. Yet, the Court concluded that the jury was wrong in finding that the stop and detention of petitioner were in violation of the Fourth Amendment. 335 S.E.2d at 586. In coming to this conclusion, the Court accepted "Davis' testimony that he was told he could not leave,"[10] 335 S.E.2d at 583, and then later rejected petitioner's denial that he violated any traffic laws.[11]

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[10] This finding makes the probable cause standard applicable.

[11] This testimony, if credited by the jury, would defeat respondents' claim that probable cause existed either to stop petitioner's car or to detain petitioner.

Here the Supreme Court of Georgia was functioning as a thirteenth juror, much as the trial judge had done. What other interpretation can be given to the observation that Officer Ramey "legitimately" stopped petitioner's car?

Finally, if there is any lingering doubt about the extent of the Supreme Court of Georgia's misconception of petitioner's section 1983 claims, consider the last sentence of the Court's opinion:

> Moreover, we make no decision here as to whether a person may maintain an action for violation of his spouse's civil rights, or whether a person's civil rights are violated when his spouse is harmed by the action of a police officer. 335 S.E.2d at 586.

If anything was made clear in this case, it was that petitioner sought to recover under section 1983 for the violation of his constitutional rights. This point was central. Moreover, it was the subject of

specific discussion just after the charge conference when counsel for petitioner stated on the record that petitioner was seeking recovery for interference with his efforts to get medical treatment for his wife. (A-65) He intended to forego any right to recover for the deprivation of his wife's constitutional rights. (A-65) Opposing counsel for respondents understood the point exactly. He qualified his agreement with petitioner's counsel by saying, "[Davis] has a right to pursue an alleged cause of action in that regard. I wouldn't necessarily concede that he has a cause of action in that regard." (A-65) In light of the record, the Georgia Supreme Court's decision to bypass this issue is inexplicable.

REASONS FOR GRANTING WRIT OF CERTIORARI

A. Introduction

A basic concern in our federal system is the respect afforded to federal law by the state courts. Nowhere should this concern be greater than when the enforcement of federal constitutional rights under section 1983 is at stake. Section 1983 actions are being brought in state courts with increasing frequency. Federal district court is no longer the unquestioned forum of choice. Though it appears that almost every state has now agreed to entertain section 1983 actions, it remains the case that state court familiarity with section 1983 issues is far less extensive than the federal judiciary's.[12]

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[12] These trends and issues are thoroughly canvassed in Steinglass, The Emerging State Court §1983 Action: A Procedural Review, 38 U. Miami L. Rev. 381 (1984).

Inherent in this situation is a risk -- perhaps transitional -- that section 1983 protections might not be fully realized in some state judicial systems. Quite apart from the occasional problem of hostility by individual judges to civil rights claims, there is a systemic concern as well: to what degree might state rules of practice and procedure undermine the enforcement of section 1983?

This case fits within that pattern. There are few Georgia appellate decisions interpreting section 1983. Municipal liability under the Monell decision requires the Georgia courts to enforce a form of liability that would not exist under state principles of municipal immunity. In some instances, adherence to Monell means that a local superior court judge would be faced with the difficult prospect of awarding damages and attorney's fees against the very governing body that finances his court. In this case, the

trial judge expressed precisely those concerns although he plainly succeeded in concealing them from the jury. But having done that, the trial judge then took the $255,000 jury verdict away from the petitioner. Bear in mind that petitioner did not get this case to the jury without a long struggle. Initially, this action was dismissed on the pleadings. Petitioner had to go through one appeal to get the case reinstated. Davis v. City of Roswell, 250 Ga. 8, 295 S.E.2d 17 (1982). Now petitioner has been forced to pursue a second round of appeals to try to regain his verdict or at least to get a new trial, neither of which he now has in light of the decisions of the Georgia appellate courts below.

B. Petitioner's Federally Protected Rights

In order for this petition to have substance, petitioner must show that when

the Georgia Supreme Court reinstated the judgment n.o.v. in favor of respondents it overlooked or perhaps did not adequately understand federal constitutional claims properly raised by the petitioner and supported by competent evidence at trial. Petitioner will show that two such claims were made. One involves a novel question; the other does not. If either was properly presented to the Georgia courts, then it would be necessary to address the final issue in this case: is there a minimum federal constitutional limitation on the power of a state court to take away a jury verdict when the right involved arises, as is true of actions brought under section 1983, under federal law?

1. Violation of Petitioner's Fourth Amendment Rights

Discussion of this point shall be brief. It is fundamental that Officer Ramey did not have the power to stop or detain the petitioner unless his action

met the applicable requirements of the Fourth Amendment. Bearing in mind that the Georgia Supreme Court found petitioner was not free to leave, City of Roswell v. Davis, 255 Ga. 158, 335 S.E.2d 582, 583 (1985), this Court may assume that an arrest or detention took place. The question becomes whether the issue of probable cause was presented to the jury and whether the petitioner introduced any credible evidence to support his contention that Officer Ramey had no reasonable basis for either the initial stop or the resulting detention.

An examination of the charge to the jury in this case discloses that petitioner's Fourth Amendment contentions were presented to the jury. Petitioner testified that he committed no traffic violations and denied causing Officer Ramey's patrol car to have to leave the road to avoid a collision. Moreover, petitioner testified that Officer Ramey

specifically told him that he could not leave the scene of the stop. The shift supervisor for the City of Roswell police department arrived at the scene just moments after the initial stop and he testified that he would not have allowed petitioner to leave. Finally, it is significant that no traffic violation charges were ever brought against petitioner based on this incident.

2. Interference With Petitioner's Right to Secure Medical Care for his Wife

The facts presented by petitioner undeniably establish that he was transporting his terminally ill wife to the hospital under order from her physician. Mrs. Davis was in a state of cardiogenic shock when she arrived at St. Joseph's hospital. As a result of the stop by Officer Ramey and the subsequent handling of the situation, she got to the hospital 15 to 20 minutes later than she otherwise

would have. This interference with petitioner's efforts was medically significant from the standpoint of time as Dr. Eyzaguirre testified. Finally, there is no dispute that petitioner became greatly distressed at not being able to drive on with his wife.

Was a constitutionally protected interest of the petitioner burdened or denied as a result of the actions taken by the respondents and their agents? The Supreme Court has made clear that traditional importance of the family unit gives rise to constitutionally protected interests. See, e.g., Santosky v. Kramer, 455 U.S. 745 (1982); Parham v. J.R., 442 U.S. 584 (1979); Moore v. City of East Cleveland, 431 U.S. 494 (1977); Griswold v. Connecticut, 381 U.S. 479 (1965); Pierce v. Society of Sisters, 268 U.S. 510 (1925). In brief, these cases hold that certain decisions within the framework of

the family are entitled to respect from the state and must be free of official interference. These cases protect sensitive aspects of the parent-child relationship, the husband-wife relationship and even encompass relations between members of the extended family.

Petitioner contended at trial that his right to secure medical care for his terminally ill wife comes within the zone of privacy associated with the marital relationship. Petitioner claimed a right to recover for the injury done to him as a result of the intrusion of the state at a crucial and emotionally trying point in his relationship with his wife. While Mrs. Davis, as the person in need of medical care, had a right of action against the respondents in this case, petitioner did not sue representatively on the §1983 claim. This Court, however, has never held that one family member can recover under section 1983 for damage to the

family unit because of injuries inflicted by the state on the person of another family member. This petition presents the issue.

A number of lower courts provide support for petitioner's position. See, e.g., Estate of Bailey v. County of York, 768 F.2d 503, 509 n. 7 (3rd Cir. 1985) (parent can sue for harm to child); Kelson v. City of Springfield, 767 F.2d 651, 654-655 (9th Cir. 1985))parent can sue under section 1983 for damages to relationship with child); Bell v. City of Milwaukee, 746 F.2d 1205, 1242-1245 (7th Cir. 1984) (parent-child relationship permits recovery; sibling relationship does not); Myres v. Rask, 602 F. Supp. 210 (D. Colo. 1985) (parent-child). Petitioner is aware of at least two decisions which implicitly would reject his theory of recovery. See White v. Talboys, 573 F. Supp. 49 (D. Colo. 1983)

(parent-child context); Jackson v. Marsh, 551 F. Supp. 1091 (D. Colo. 1982) (parent-child context). Interestingly, in a recent federal district court decision, the court held that a widow stated a cause of action under section 1983 when police carrying out a traffic stop interfered with her efforts to get her desperately ill husband to the hospital. The widow in that case, however, sued on behalf of her deceased husband and not for injuries which she may have suffered due to the breach of the marital relationship. Baldi v. City of Philadelphia, 609 F. Supp. 162 (E.D. Pa. 1985). The Baldi case is helpful for it indicates the actionability of respondents' conduct in this case, but the district court did not have to address who might be entitled to sue in a personal rather than a representive capacity.

Cases of the type that petitioner has brought are likely to increase in

number. There is great force to the idea that a husband has a due process liberty interest in a marriage relationship which he enjoys with his wife. How does one differentiate the spousal relationship from the interests in the parent-child cases where many courts have been quite receptive to due process claims? A clarification of the difficult questions in this area of constitutional family law would provide guidance to the lower courts in a developing area. Presently, the lower courts must draw inferences from Supreme Court decisions which point toward an outcome in cases like petitioner's but do not plainly settle the issue.

C. Underenforcement of Federal Law

Whenever state courts apply federal law, there is a concern about uniformity of enforcement. In this vein, it is well established that state procedural rules cannot be applied in a manner that would tend to undermine federal law. That concern ought to be at its greatest in state section 1983 cases given the historical background of the enactment of the Civil Rights Act of 1871. Petitioner urges this Court to determine whether the Georgia appellate courts applied the standards for judgment n.o.v. and the grant of a new trial in a manner inimical to petitioner's section 1983 rights.[13]

Petitioner has already suggested the theories on which his jury verdict might have been based. He has outlined

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[13]Petitioner does not argue that the state standard in Georgia is in form a threat to federal rights. In practice, however, it was in this case.

briefly the relevant evidence in support of those theories. He suggests that the sufficiency of evidence to get a case to the jury is a federal question. Rogers v. Missouri Pacific R. Co., 352 U.S. 500, 506-507 (1957); Lavender v. Kurn, 327 U.S. 645, 652-653 (1946); Brady v. Southern Ry. Co., 320 U.S. 476, 479 (1943) ("[W]hen a state's jury system requires the court to determine the evidence to support a finding of a federal right to recover, the correctness of its ruling is a federal question."). Petitioner admits that his authority is limited to FELA and Jones Act cases, but he submits that the principle ought to be applicable to section 1983 cases as well. Professor Wright observes in his treatise that this federal test of sufficiency has been applied in a number of diversity cases. C. Wright, FEDERAL COURTS 643 (4th Ed. 1983). Petitioner believes that review of the decision to reinstate the trial court's

judgment n.o.v. for respondents is quite important to the uniformity with which state courts enforce section 1983 rights.

Petitioner maintains that the same is true with respect to the Georgia standard permitting a trial judge to grant a new trial the first time virtually without appellate review -- even when the order meets finality requirements for appellate consideration. The power possessed by a trial judge to force a civil rights litigant to endure a grueling, uphill struggle to prevail is enormous.[14] It, too, should be subject to minimum federal standards.

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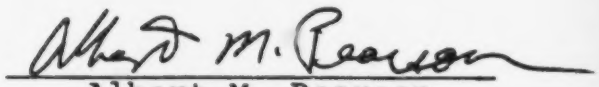
[14] Consider two federal cases in this regard. Anderson v. City of Atlanta, 778 F.2d 678 (11th Cir. 1985); Williams v. City of Valdosta, 689 F.2d 964 (11th Cir. 1982).

CONCLUSION

Petitioner respectfully asks that his petition be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

As a member of the Bar of the United States Supreme Court, I hereby certify that on this 18th day of February of 1986, three copies of the foregoing Petition for Writ of Certiorari were mailed, first-class, postage pre-paid to:

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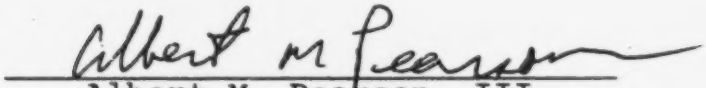

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